



INTERIOR BOARD OF INDIAN APPEALS

Estate of John S. Ramsey (Wap Tose Note)

2 IBIA 305 (05/22/1974)

Also published at 81 Interior Decisions 298

Denying reconsideration of:
2 IBIA 237

Judicial review of this case:
Dismissed, *Scott v. United States*, No. 3-74-39 (D. Idaho Aug. 11, 1975)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF JOHN S. RAMSEY (WAP TOSE NOTE)

(Nez Perce Allottee No. 853, Deceased)

IBIA 74-2 Supp.

Decided May 22, 1974

Motion for Reconsideration, oral argument, and for attorney's fees.

Denied.

Indian Probate: Reconsideration: Generally

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors such as newly discovered evidence or fraud are involved.

APPEARANCES: Norman L. Gissell, Esq., for petitioner, Clara Ramsey Scott.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

The petitioner filed motions for reconsideration of the decision rendered in the above-entitled matter issued April 17, 1974, for oral argument, and for attorney's fees.

Indian probate regulations do not contain any provisions for reconsideration of a final decision, although the Board of necessity has inherent power to rectify manifest error in any of its decisions. Estate of Julius Benter, IBIA 70-5 (Supp) (January 12, 1971).

A petition for reconsideration to be granted must contain an adequate basis for reconsideration such as newly discovered evidence or fraud. Estate of Ute, IA-143 (Supp) (August 25, 1955).

The petitioner contends among other things that the Board erred in reviewing facts and issues not presented by Appellant on Motion for Reconsideration.

We do not agree.

In making its decision, whether following an initial or recommended decision, the agency is in no way bound by the decision of its subordinate officer; it retains complete freedom of decision as though it had heard the evidence itself. See National Labor Relations Board v. Elkland Leather Co., 114 F.2d 221, 225 (C.C.A.3 1940), certiorari denied, 311 U.S. 705.

Powers of an agency reviewing an initial or recommended decision of an examiner are greater than those of an appellate court reviewing the decision of a trial judge. N.L.R.B. v. A.P.W. Products Co., C.A.N.Y. 1963, 316 F.2d 899.

We conclude that the Board of Indian Appeals has the authority to review the whole record and to make findings and render a decision opposite to that of the Administrative Law Judge.

The petitioner does not allege newly discovered evidence or fraud as additional grounds. Consequently, under the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, it is determined that this matter has been properly conducted, decided and reviewed.

We further conclude, that since the matter was remanded for the purpose of determining the validity of the decedent's Last Will

and Testament executed June 3, 1965, that the motion for attorney's fees is premature.

IT IS ORDERED that the motions for reconsideration, oral argument and attorney's fees shall be and the same are hereby denied and the continuing mandate contained in the decision of April 17, 1974 directing the Administrative Law Judge to determine the validity of the decedent's Last Will and Testament executed June 3, 1965 is reaffirmed.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
David J. McKee
Chief Administrative Judge